

# **EXHIBIT 2**

Hunters Capital, LLC v. City of Seattle

Seth W. Stoughton

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

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HUNTERS CAPITAL, LLC, et al.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 20-cv-00983-TSZ
	)	
CITY OF SEATTLE,	)	
	)	
Defendant.	)	

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VIDEOTAPED VIDEOCONFERENCE DEPOSITION

UPON ORAL EXAMINATION OF

SETH W. STOUGHTON

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Columbia, South Carolina

(All participants appeared via videoconference.)

DATE TAKEN: AUGUST 30, 2022

REPORTED BY: CINDY M. KOCH, RPR, CRR, CCR #2357

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1 A. Oh, not off the top of my head, no.

2 Q. Do you recall -- do you know what kind of  
3 neighborhood there was around the Zuccotti Park protest?

4 A. I believe it's a financial work district, but I  
5 will admit that my knowledge of New York geography is --  
6 is limited.

7 Q. Okay. I guess generally, what -- what is  
8 your -- what is your -- have you -- have you personally  
9 studied protests and anti-police protests and police  
10 responses to those protests?

11 A. Yeah. First as an officer. I spent two years  
12 on my department's special response team, which was our  
13 riot response and crowd control team. So we got  
14 advanced training in the strategy and tactics of crowd  
15 control and riot response.

16 Then as an academic, although I haven't written  
17 extensively on the topic, it's certainly been within my  
18 field of study, focusing on police tactics and use of  
19 force.

20 Q. Well, have you specifically gone back and  
21 looked at large-scale protests and police responses to  
22 those protests?

23 A. Yes. Some of the -- the debriefing reports,  
24 including the ones recently, after the 2020 protests,  
25 the sort of collective George Floyd protests, some of

1 the historical reports, yes.

2 Q. Other than twenty -- other than the 2020  
3 reports, what -- what sort of investigation or study  
4 have you done of protests prior to 2020 and police  
5 responses to those protests?

6 A. Oh, boy. I've read a pretty good amount on  
7 protest policing as it is written about in academic  
8 circles, scholars like Ed McGuire, for example. I've  
9 also read about some specific protests just kind of  
10 offhand: the police response to the WTO protests, the  
11 police response to Rodney King, police response to  
12 Ferguson, police response to Overtown, or Overton -- I  
13 think it's Overtown, police response to a number of the  
14 civil rights protests, police response -- this is now  
15 backing up even further -- police response to labor  
16 protests in the organized labor movement around the turn  
17 of the last century, police response to some of the race  
18 protests, and now we're talking about eighteen -- 1860s  
19 to 1880s, and the reconstruction era.

20 I -- I'm sure there are some specific others,  
21 but those are all ones that I've -- I've read about or  
22 studied whatever materials are available.

23 Q. Okay. We've mentioned a few times the WTO  
24 protests in Seattle, and they were in November and  
25 December of 1999.

1 What do you know specifically about those  
2 protests?

3 A. Oh, offhand? I mean, I haven't -- I haven't  
4 reviewed any materials about them specifically in  
5 preparation for this, but the WTO protests were an  
6 interesting -- now, in retrospect. At the time they  
7 probably were not particularly interesting.

8 But in retrospect, they're interesting because  
9 they mark one of the first large-scale protests where  
10 you have such a broad diversity of interests in the  
11 people who are protesting.

12 So this really marked, I think, the first  
13 large-scale protest where negotiated consent failed as a  
14 matter of strategy in dealing with protesters.  
15 Introduced policing, for example, to an anarchist  
16 protest movement that's now referred to as the  
17 black bloc. I think at the time it was referred to as  
18 the black bloc.

19 And police officers and the agency, as a whole,  
20 had to really distinguish between different -- let's  
21 say -- different groups of protesters is a little hard,  
22 but protesters who were engaged in legally different  
23 behavior or who were protesting for very distinct  
24 reasons.

25 The -- how much do you want me to get in -- I'm

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1 speaking totally off the cuff about this. I really have  
2 not prepared a lecture on the WTO protests specifically,  
3 but that's what sticks out at me first.

4 Q. Well, first of all, we should just establish  
5 for the record, those protests were in Seattle; right?

6 A. Yes.

7 Q. And you -- would you agree --

8 A. At the --

9 Q. -- they happened in the late part of 1999?

10 A. That sounds right. I mean, if -- if -- yes,  
11 I -- offhand, I think that's certainly within the realm,  
12 but I don't remember exactly when.

13 Q. And would you agree that at least some of  
14 the -- some of the elements in the protests that you  
15 described were anti-police in nature?

16 A. I don't think the sources I'm familiar with  
17 suggest that there were a whole lot who were  
18 specifically anti-police. There were a number who were  
19 anti-government or anti-organized government, and I  
20 would include the police in that.

21 That's sort of the anarchist black bloc  
22 movement. I think they -- they would probably be  
23 protesting any exercise of government control, including  
24 police exercise of government control.

25 Q. Do you remember, during the WTO protests, there

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1 to -- as opposed to doing what a number of agencies had  
2 previously done, which is just throw a bunch of officers  
3 into the field and put them on a line.

4 Q. Now, you said earlier you thought maybe they  
5 had ceded territory during the WTO protests. Do you  
6 know specifically whether they did?

7 A. Offhand, I -- I don't. I'm pretty sure that  
8 with the -- I'm pretty sure that I remember that there  
9 was an ebb and flow of where the police were engaging  
10 protesters, and that they had to reengage protesters at  
11 the same location several times, but I -- I don't  
12 remember offhand.

13 Q. Do you remember whether the Seattle Police  
14 Department abandoned any precincts during that period?

15 A. I don't believe the precincts were targeted by  
16 the protesters in the protest. I'm pretty sure they did  
17 not evacuate any of the precincts. They might have been  
18 empty because they had all of the officers on the line,  
19 but I -- I don't believe that they were evacuated  
20 because of the protests.

21 Q. So do you know -- do you know anything that was  
22 going on with the WTO and the West Precinct -- the WTO  
23 protests and the West Precinct and the location of the  
24 West Precinct at that time?

25 A. Offhand, no. Like I said, I didn't -- I didn't

1 prepare any of that specifically for the deposition, so  
2 offhand, no.

3 Q. Well, aside from the deposition, have you  
4 looked at that at all?

5 A. I -- I'm sure I have as part of reading about  
6 and studying the -- the incident. I just don't remember  
7 it offhand.

8 Q. Okay. Do you know whether the Seattle Police  
9 Department stopped providing services to the portion of  
10 downtown Seattle that was occupied by protesters during  
11 the WTO?

12 A. I'm sorry; whether they stopped -- say again,  
13 please?

14 Q. Providing services.

15 A. I'm -- offhand, again, I do not. I suppose it  
16 depends on -- on what we mean by that, but no, I --  
17 offhand, I don't.

18 Q. Do you know whether they created anything  
19 similar to the red zone in 1999 in response to the WTO  
20 protests?

21 A. Oh, there were definitely protest lines, but  
22 I -- how do you mean, similar to the red zone?

23 Q. Do you know whether they were restricting  
24 in-person responses by police to certain crimes that  
25 might have been occurring in the red zone in 1999?



1 Q. Now -- actually, I'll get to that later.

2 So I'd like to go to your opinions that start  
3 on Page 24.

4 A. Okay.

5 Q. And I want to ask you first about your -- your  
6 first numbered opinion, which is that the initial  
7 decision to evacuate the East Precinct was reasonable  
8 and tactically appropriate and consistent with generally  
9 accepted principles in policing.

10 A. Yes.

11 Q. What -- what is the -- what generally accepted  
12 principles in policing are you referring to and relying  
13 on with regard to this opinion?

14 A. Oh, there are a number of them, as I -- as I  
15 lay out in the opinion. One of them is the -- the sort  
16 of priority list. Right? Preservation of human life,  
17 both the officers and -- well, in priority order,  
18 innocent bystanders first, officers second, and criminal  
19 suspects a somewhat distant third.

20 Another of which is what is now probably  
21 50 years of tactical principles, everything from  
22 conflict avoidance to tactical withdrawal to really the  
23 theory of how police officers and agencies manage risk.

24 Another generally accepted practice is -- or  
25 principle, excuse me, is just working within the

1 constraints that you have. Police departments have to  
2 be very practically minded. They -- you know, you may  
3 want the world to be a -- a particular way, but as I  
4 believe a military general said, you fight the war with  
5 the resource- -- no, I'm sorry. That was Rumsfeld,  
6 wasn't it? You fight the war with the resources you  
7 have, not the -- or the Army you have, not the Army you  
8 wish you had.

9 There -- there are probably more particular  
10 principles that we can get into, concepts of imminent  
11 threat, for example. But at a broad level, the concepts  
12 are how to balance -- or the principles, the generally  
13 accepted principles, is how police departments should  
14 think about balancing different competing priorities in  
15 high-pressure incidents.

16 Q. Okay. So in any of those sources that you've  
17 talked about, is there anywhere where evacuation of a  
18 police facility has been used or suggested to be used as  
19 a way to manage risk of harm to either the public or to  
20 officers?

21 A. No. So that's -- I'm distinguishing here  
22 between generally accepted principles and practices,  
23 like specific things that you do. I'm not aware of any  
24 resource that talks about the generally accepted  
25 practice of evacuating a police department.

1 protesters over a prolonged period. There are no  
2 simply -- there are no generally accepted tactical  
3 protocols to guide police decision-making under such  
4 circumstances."

5 Do you see that?

6 A. Yes.

7 Q. And I think we talked about the first sentence  
8 already, unless you have something you want to add. But  
9 my question is this: So you're saying there's no  
10 generally accepted tactical protocols to guide police  
11 decision-making in these circumstances; is that correct?

12 A. Yes.

13 Q. And yet you're able to reach the conclusion  
14 that the police department acted in -- consistently with  
15 generally accepted police practices; is that right?

16 A. No. With principles.

17 Q. With principles. Okay. Just so --

18 A. Yes.

19 Q. Elaborate on that for me, please.

20 A. Yeah, so what I'm --

21 Q. How those are not inconsistent?

22 A. Yeah, so what I'm talking about, when I say  
23 generally accepted police principle, it's a -- it's --  
24 it's abstract. It's conceptual. It's, you know,  
25 something like preservation of human life is our highest

1 priority.

2 That isn't a guide that specifies in any given  
3 situation how to act. It's instead a principle that, in  
4 any given situation, you can refer to, to assess, okay,  
5 how should we be reacting. Right? We should be  
6 responding according to this generally accepted  
7 principle.

8 A practice or a protocol is specific. It's  
9 granular. So for example, in a felony stop situation or  
10 a high-risk stop situation, like when an officer pulls  
11 over a car that he believes to be occupied by an armed  
12 robber or something like that, there is a set of  
13 generally accepted protocols or practices that tell an  
14 officer in some degree of detail, not exhaustive detail,  
15 but in some degree of detail, step one, do this; step  
16 two, do that; step three, do this other thing.

17 Now, those protocols are written with those  
18 tactical principles in mind, but instead of being as  
19 amorphous or as abstract, is really a better word, as  
20 the principles, they are specific guidance.

21 Now, again, in any given situation, maybe you  
22 can't employ the specific guidance and you have to fall  
23 back on the principles, but as a general matter, we have  
24 situations where there are specific protocols or there  
25 are specific practices that we expect officers to engage

1 in.

2 When those are lacking, when you don't have  
3 specific guidance, this is exactly what you're supposed  
4 to do. We instead say, okay, so what are the principles  
5 that should guide your decision-making?

6 I'll take a very simple example. An officer is  
7 trying to arrest someone who pulls away from them.  
8 There are a lot of protocols. You can do an arm bar  
9 takedown or a foot sweep takedown, or you can allow the  
10 person to run and you can chase them while you call in  
11 other officers, all kind of depending on -- on which  
12 situation presents itself.

13 But in the absence of that specific protocol,  
14 this is what you should do, you say, okay, well, what am  
15 I supposed to do here? I'm supposed to try and preserve  
16 life, apprehend criminal offenders.

17 So I want to do the thing that will minimize  
18 the amount of harm while still allowing me to engage in  
19 the law enforcement objective of apprehending this  
20 person.

21 So just think of generally accepted principles  
22 and specific protocols or practices as different levels  
23 of abstraction. I think that -- that's a little  
24 academic, I apologize, but I -- I think that's the most  
25 hopeful way to think about it.

1           When you look at policy papers, like what the  
2           I -- sorry -- the International Association of Chiefs of  
3           Police puts out in their policy papers, it's often  
4           principle. When you look at some of their model  
5           policies, sometimes that's principle. Sometimes it's  
6           practice or protocol.

7           In this case, we don't have any protocols or  
8           practices. You can't go to the police manual, whatever  
9           that would look like, and, you know, flip to the, my  
10          precinct is being besieged by confrontational protesters  
11          page and just follow the step-by-step instructions. So  
12          you have to fall back on the principles.

13          Q. Okay. So are these principles -- are these  
14          principles you're talking about ever informed by what  
15          police -- police have done in the past, as far as their  
16          practices?

17          A. Sure, in part. Often it's the protocols that  
18          are -- that are most specific in drawing lessons from  
19          specific past actions. How we call in a traffic stop,  
20          or how you respond to an active shooter. There was  
21          something that went bad, and we learned a lesson from it  
22          and we adapted the protocol.

23          The principles can -- can be, so a lot of  
24          tactical principles, for example, without getting to  
25          level of practice, a lot of tactical principles are

1 built on now 50 years of both study and field experience  
2 in the field of police tactics. So I -- I give -- I'm  
3 giving you the -- the -- I'm giving you the traditional  
4 law professor answer of, it depends.

5 Q. Okay. So you talked about the principle of  
6 risk priority. Where is that principle embodied? Is it  
7 written down anywhere? What's -- what's my under- --  
8 what's my understand- -- what's your understanding of  
9 where that principle comes from?

10 A. Sure. So principles, I think, arise  
11 organically from the profession itself, although they  
12 are often written down in some way, shape, or form, and  
13 a number of -- so it -- with risk priority, and  
14 particularly, let's take that first priority is the  
15 preservation of human life. That's now written down  
16 kind of all over the place, in -- in -- in a -- a big  
17 picture way by organizations like the Police Executive  
18 Research Forum or the International Association of  
19 Chiefs of Police; in a more granular way by individual  
20 police departments in the form of policy statements in  
21 their policy and procedure manuals; sometimes in -- even  
22 things like social media statements, or the slogans on  
23 the side of an officer's car, right, to serve and  
24 protect communicates in some way the principles of an  
25 agency.

1 Other principles are -- you know, how we  
2 prioritize things, like let's go back to the -- the, you  
3 know, innocent bystander's life first, officer's life  
4 second, suspect -- criminal suspect's life third.

5 That will be communicated in training. It's  
6 certainly a well-established part of the culture of  
7 policing. I don't know that you would find it in a  
8 policy manual. Maybe, but I -- I -- I would tend to  
9 doubt it.

10 It's one of those principles that underlie  
11 policing without being specifically written down in  
12 the -- you know, the 600-page policy manual that an  
13 officer operates under.

14 Q. Are you aware of anywhere where it is taught  
15 that abandonment of a police precinct should be  
16 considered as a tactical response to a protest?

17 A. No. I think it's too granular. I'm not  
18 familiar with -- with anything like that, but I'm also  
19 not familiar of anywhere where it's written that, you  
20 know, an officer should jump out of their car at a given  
21 situation.

22 However, there are definitely situations where  
23 you want an officer to jump out of their car. I -- I  
24 think it's -- it's a -- what you're asking for is a  
25 search for granular practice that doesn't exist because



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1 another night like the last six or seven or eight nights  
2 that we just had.

3 So yeah, I don't think you need to fire to get  
4 to tactical withdrawal. Evacuating the building is a  
5 tactically appropriate decision.

6 Q. Are you aware of any case in which officers  
7 have left a building if there wasn't a bomb threat, a  
8 fire threat, or some other threat to the building being  
9 destroyed, other than the June 8th decision that we are  
10 here, where the police department decided to evacuate  
11 the building?

12 A. Yeah. Oh, yeah. I mean, substations get shut  
13 down. A precinct house gets moved. There's asbestos in  
14 the precinct building.

15 Q. Okay.

16 A. There's a high-priority call that involves a  
17 bunch of officers to respond. Like the -- leaving the  
18 building is -- I'm not sure that's where you were going,  
19 but --

20 Q. Have you ever -- are you aware of any  
21 situation, without a threat of fire, a bomb, or some  
22 other threat to destroy the building, where police  
23 officers have evacuated a building in response to a --  
24 an anticipated protest?

25 A. Offhand, no. Focusing on that evacuated a

1 building, certainly I'm aware of buildings that have  
2 been left empty because the police department needs to  
3 go respond to the protest.

4 But as far as evacuating a building, no,  
5 this -- this is the first one with this building being  
6 besieged that I'm aware of. That's part of why I think  
7 it's unprecedented, as we talked about.

8 Q. What is unprec- -- but you're saying that the  
9 lead-up to the events were unprecedented; correct? And  
10 also the decision to evacuate the precinct was  
11 unprecedented also; is that right?

12 A. Yes. I think that's fair, yes.

13 MR. WEAVER: Let's go ahead and go off the  
14 record. We've been going about another hour.

15 THE VIDEOGRAPHER: Going off the record at  
16 11:28.

17 (Recess from 11:28 a.m. to 11:39 a.m.)

18 THE VIDEOGRAPHER: Back on the record at  
19 11:39.

20 E X A M I N A T I O N (Continuing)

21 BY MR. WEAVER:

22 Q. With regard to the mayor's order that we've  
23 been talking about, to stand down from the barriers and  
24 let people walk by the precinct, in your experience, is  
25 that typically a tactical decision that would be in the

1 A. It would, yes.

2 Q. I think, but I was writing as fast as I could,  
3 you were talking also about the generally accepted  
4 principle of alternative actions.

5 Did I get that right?

6 A. Yeah. So the idea here is, you look at the  
7 various actions that are available. What do your  
8 resources allow you to do. Right? What are the  
9 realistic constraints that you have and what do your  
10 resources allow you to do.

11 And then it's a matter of choosing from those  
12 available alternatives which one best balances or, for  
13 my purposes, among the ones that reasonably balance the  
14 competing priorities in any given situation.

15 Does that make sense?

16 Q. I think so.

17 So what alternative actions did the police  
18 department have, other than evacuating the precinct, in  
19 your view?

20 A. You mentioned one earlier. Assuming the  
21 resources were available, and I'm going to make some  
22 assumptions here, bringing in barricades and walling off  
23 the precinct and potentially staying in it. Even  
24 assuming that the barricades weren't available, just  
25 staying in the building.

1 Now, to say that an option is available is not  
2 to suggest that -- that it was a -- a good option or a  
3 reasonable option. It may be; it may not be. If the  
4 police thought that they could defend the building, then  
5 I think it -- as we talked about before, I think it  
6 would have been among the reasonable options for them to  
7 potentially do so, or attempt to do so.

8 The -- maybe the best way to think of options  
9 is really -- and I mentioned this idea of the spectrum  
10 of reasonableness. It's really on a -- on a spectrum.  
11 Right?

12 What are all of the things that we can imagine  
13 the police doing? Well, we can -- we can probably  
14 ignore the ones that are facially immoral, unethical,  
15 illegal. We can just grant that those ones are -- are  
16 unreasonable.

17 So then we're left with some other set of  
18 options, and we're trying to figure out what's the line  
19 between the reasonable options and the unreasonable  
20 options.

21 I -- sorry; I got abstract again. Your  
22 question was very specific. What were the other  
23 reasonable options that they could have done.

24 Depending on how they balanced priorities,  
25 bring everyone over from the West Precinct and reinforce

1 the East Precinct. That was an available option, as I  
2 understand it.

3 You know, maybe -- I don't know. I'm kind of  
4 thinking my way through this on the fly a little bit,  
5 but see about skeleton sched- -- staffing, or skeleton  
6 crewing the East Precinct. Right? Have a -- have a --  
7 a good evacuation plan set up for the folks who stay in  
8 the building, but don't completely evacuate it.

9 Kind of like what they did later, after the  
10 July 8th decision, where they had some folks go back in  
11 and were monitoring and working within the building. So  
12 a whole -- a whole kind of range of options.

13 Q. All right. So --

14 A. A menu, if you will.

15 Q. Okay. You talked about finding the line  
16 between reasonable options and unreasonable options.  
17 Where do you think that existed on June 8th with regard  
18 to the options about what to do with the East Precinct  
19 and evacuating it or fortifying it or other options?

20 A. Yeah, I can't -- I can't offer a specific line  
21 to draw there because obviously they made the decision  
22 they made, and I'm really only analyzing the decision  
23 they made and not all of the decisions that they could  
24 have made, but didn't.

25 But at least as a general matter, you look at

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1 consideration of the evidence.

2 Q. Well, what evidence do you believe indicates  
3 that it was not foreseeable?

4 A. Everything in the Understanding of Facts  
5 section, along with, I suppose, any tidbits that I --  
6 that I didn't include there, although I certainly tried  
7 to include everything that I thought was relevant.

8 The -- the previous seven days of protests,  
9 which did not have indications of occupation protest, or  
10 did not set up an occupation protest. Protests  
11 elsewhere in the city, which were distinct from the East  
12 Precinct. And the specific actionable intelligence  
13 available to the police, which focused on entering,  
14 serious or significant damage to, or burning down the  
15 East Precinct building.

16 Q. Okay. I'd like to go to your -- your next  
17 opinion, which has to do with the modified police area  
18 and the red zone, and whether that was consistent with  
19 generally accepted principles in policing.

20 A. Sure.

21 Q. Starting on Page 34. Are there any generally  
22 acceptable -- generally accepted principles in policing  
23 that you're relying on for this opinion that are  
24 different from the principles we discussed with regard  
25 to your first opinion?

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1           A. I think there is more of an emphasis on  
2 principles of conflict avoidance in this opinion than  
3 there are in the -- in the first opinion, but I think  
4 largely the underlying principles are the same.

5           Q. Okay. To what extent --

6           A. The detail and application may be a little  
7 different, but I think largely they're the same.

8           Sorry. I did the pause thing again.

9           Q. That's all right. I do the same thing.

10           To what extent do you think the red zone  
11 decision was consistent with the policy of preserving  
12 human life?

13           A. So this is where conflict avoidance comes in.  
14 Given multiple alternatives, right, as officers or as an  
15 agency is considering how they're going to approach  
16 something, you generally want to approach a situation in  
17 a way that is likely to minimize, if not eliminate, the  
18 potential for conflict.

19           Conflict is in some cases unavoidable in  
20 policing, and police should not close their eyes to that  
21 or plug their ears or run away or anything like that,  
22 but when you can fairly avoid it, you should. That's a  
23 significant part of what police tactics are all about.

24           Q. Okay. I'm not 100 percent confident you  
25 answered my question, so I'm going to ask it again.

1 there were protesters there. They were peaceful,  
2 although I think the -- the perception, and I think this  
3 is a reasonable perception, is, they were peaceful  
4 because the police were not there.

5 When you introduce the police to that -- that  
6 currently peaceful protest, you end up just setting the  
7 dial back a day to the violent protest, the violent  
8 interaction between the protesters and the police.

9 Q. So is it your -- is -- are you offering the  
10 opinion that there was nothing the police could have  
11 done to move into the area and move back to the East  
12 Precinct on June 9th that would not have provoked a  
13 violent response?

14 A. No. My opinion is that not moving back on  
15 June 9th was reasonable. Now, might it have been  
16 reasonable to move back on June 9th, given appropriate  
17 circumstances? Sure. But there can be more than one  
18 reasonable option available to officers in any given  
19 situation.

20 So I -- I don't think that saying that, you  
21 know, it -- it was reasonable for them to take the  
22 approach that it did necessarily rules out arguments  
23 that other approaches were also reasonable.

24 But by the same property, the identification  
25 that another approach might also have been reasonable



1 doesn't rule out the fact that this was reasonable too.

2 Q. Other than I think when you talked about as the  
3 obviously immoral-type decisions that a police  
4 department could make, what would be -- have been an  
5 unreasonable response on June 9th, to the people who had  
6 set up the barriers and were blocking entrance to the  
7 East Precinct?

8 A. What would have been -- I mean, again, I can  
9 spin out a range of hypotheticals. You know, bringing a  
10 bunch of cars up and, you know -- I don't know.  
11 Again -- well, let's use the same example that I used  
12 before.

13 Sending a bunch of ill-equipped officers out to  
14 deal with this crowd that they now don't even have the  
15 benefit of barricades to deal with. Right? That  
16 probably would not have been a reasonable approach.  
17 Sending -- well, that takes me back to reasonable.

18 You know, I think there are a range of -- of  
19 possibilities. I'll use another one that I used before.  
20 Right? Pulling a helicopter in to hover over the head  
21 of the -- of the crowd and try and drive them out that  
22 way probably would not have been reasonable, given what  
23 I understand about the -- the -- the geography of the --  
24 the location.

25 Pulling all of the officers out of the West

1 Precinct and in other areas of the city so that you  
2 are -- are truly unable to provide any police --  
3 delivery of police services citywide because you're  
4 focused on this micro incident, right, this very  
5 specific location, that probably would not have been  
6 reasonable.

7 I -- I can keep going as they -- as they come  
8 to me, but there are a whole range of things that they  
9 could have done that -- that were not reasonable, and a  
10 whole range of things they could have done that were.

11 Q. Okay. And within the range of things that  
12 would have been reasonable, there would have been some  
13 responses that involved going in and retaking the East  
14 Precinct that would have been reasonable and consistent  
15 with generally accepted principles in policing; is that  
16 right?

17 A. Potentially, sure. A group of well-equipped  
18 officers at a time of day when there isn't a significant  
19 crowd, who had the tools they need to properly, say,  
20 barricade the -- the East Precinct building, to fortify  
21 it the way they did later, sure, perfectly reasonable.

22 Sending in a small group of officers to surveil  
23 the situation, as I understand they did, perfectly  
24 reasonable. Potentially bringing in a large group of  
25 officers if the situation -- if the assessment had

1 changed. Right? Okay.

2 Now we've -- the FBI has come out and said that  
3 we've debunked that whole fire thing, and the chatter  
4 about destroying the East Precinct, it's from people  
5 over in New Jersey, so we don't even have to worry about  
6 that. Right? We don't have credible intelligence that  
7 the -- the building itself is in danger.

8 Well, that changes the context of the  
9 situation. So sure, go back in. Yeah, there are a  
10 range of options under the precise circumstances, or as  
11 we manipulate variables, that very well could have been  
12 reasonable.

13 Q. Okay. Is this occupation protest another  
14 situation where you would say that there is no generally  
15 accepted -- no generally accepted tactical protocols to  
16 decide police decision-making in these circumstances?

17 A. Occupation protests are really tough. I think,  
18 again, there are principles, but not protocols, except  
19 in the tactical communication world. So for example,  
20 how you set about trying to negotiate. Not always  
21 successful, but how you set about doing so, there are  
22 some -- some good protocols for that.

23 But occupation protests are either really old,  
24 think of like the student occupation protests in the  
25 Vietnam war era, or they are relatively new, like the

1 the interaction with occupation protesters.

2 I would have to look more extensively at  
3 specific occupation protests to identify how -- how  
4 strong or how weak the analogy is, but offhand, I'm not  
5 aware of any that -- that took this exact approach.

6 In part, that's because of lack of highly  
7 detailed familiarity with the police response to some of  
8 those protests. What I -- when I have read about or  
9 studied some of the police responses, it wasn't -- yeah.  
10 What protocols did they come up with, with answering  
11 calls for service? It's really more, you know, where  
12 were they positioned, what were the communication  
13 strategies, what worked and what didn't.

14 Q. Okay. So you're not aware -- you're not aware  
15 of any place that has -- any other department that has,  
16 in response to an occupation protest, decided not to  
17 respond to calls for service other than for critical  
18 life safety emergencies, at least respond in person to  
19 the point of the call; is that right?

20 A. Offhand, I am not. I'm certainly aware of  
21 changes to the way that they provide policing services,  
22 the way they deliver policing services, but not any that  
23 mirror the changes in Seattle.

24 Q. Okay. Does that play in at all to your de- --  
25 into your consideration of whether this is in acceptance

1 with generally accepted principles in policing?

2 A. Sure. It's certainly relevant. What have  
3 other agencies done in light of the circumstances that  
4 they've faced, as I understand them. It -- it -- I  
5 mean, it's all kind of relevant. What happens in the  
6 industry? What is the generally accepted approach here?  
7 And what are the principles that underlie the generally  
8 accepted approach, if there is a generally accepted  
9 approach?

10 Q. If a police policy is unprecedented, does that  
11 make it more or less likely that it's in accordance with  
12 generally accepted principles in policing?

13 A. Oh, I don't think I can fairly answer that  
14 question. It really depends on the nature of the policy  
15 and the situation in which it's been adapted, or  
16 adopted, depending on whether the policy is an adaption  
17 of what you're already doing or whether you're really  
18 adopting an entirely new thing.

19 I -- I don't think anyone could say, oh,  
20 they're doing something different, so it is likely to  
21 not be or it is likely to be consistent with policing  
22 principles. It kind of depends on the specifics.

23 Q. Okay. And again, I just want to make clear  
24 that you're not giving the opinion that the First  
25 Amendment required the adoption of the red zone in order

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Seth W. Stoughton

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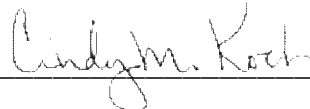
C E R T I F I C A T E

STATE OF WASHINGTON

COUNTY OF PIERCE

I, Cindy M. Koch, a Certified Court Reporter in  
and for the State of Washington, do hereby certify that  
the foregoing transcript of the deposition of Seth W.  
Stoughton, having been duly sworn, on August 30, 2022,  
is true and accurate to the best of my knowledge, skill  
and ability.

IN WITNESS WHEREOF, I have hereunto set my hand  
and seal this 1st day of September, 2022.



CINDY M. KOCH, CCR, RPR, CRR #2357



My commission expires:

JUNE 9, 2026